

1 Jay Earl Smith, Esq.
2 Nevada Bar No. 1182
3 Katie M. Weber, Esq.
4 Nevada Bar No. 11736
5 SMITH LARSEN & WIXOM
6 Hills Center Business Park
7 1935 Village Center Circle
8 Las Vegas, Nevada 89134
9 Tel: (702) 252-5002
10 Fax: (702) 252-5006
11 Email: jes@slwlaw.com
12 kw@slwlaw.com
13 Attorneys for Defendant
14 JPMorgan Chase Bank, N.A.,
15 as successor by merger to
16 Chase Home Finance LLC

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ELLERY J. PETTIT,)
Plaintiff,) CASE NO. 2:11-cv-00149-GMN-PAL
v.)
PULTE MORTGAGE LLC and CHASE BANK)
and CHASE HOME FINANCE LLC and IBM)
LENDER BUSINESS PROCESS SERVICES)
and MERS (Mortgage Electronic Registration)
System),)
Defendants.)

**JPMORGAN CHASE BANK, N.A.'S
REPLY IN SUPPORT OF ITS MOTION
FOR JUDGMENT ON THE PLEADINGS**

Defendant JPMorgan Chase Bank, N.A., as successor by merger to Chase Home Finance LLC (also incorrectly named herein as Chase Bank) ("Chase"), by and through its undersigned counsel, hereby submits this reply ("Reply") in support of its Motion for Judgment on the Pleadings ("Motion for Judgment"). The Reply is supported by the within Memorandum of

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

1 Points and Authorities, the record herein, and any arguments that may be presented at a hearing
 2 hereon.
 3

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. PLAINTIFF HAS CONSENTED TO DISMISSAL OF CHASE**

6 On November 21, 2011, Plaintiff filed his Amended Complaint, which does not name
 7 Chase as a defendant and does not allege any wrongful conduct by Chase. (See Docket No. 44.)
 8 Indeed, the Amended Complaint does not mention Chase at all. (See *id.*) It is clear that
 9 Plaintiff's intent is to dismiss Chase from this action. That being the case, the Motion for
 10 Judgment should be granted, and the Complaint should be dismissed with prejudice as against
 11 Chase.
 12

13 **II. PLAINTIFF HAS PROVIDED NO MEANINGFUL RESPONSE TO THE
 14 ARGUMENTS IN THE MOTION FOR JUDGMENT**

15 The Complaint herein should be dismissed as against Chase because Plaintiff has
 16 consented to its dismissal by filing an Amended Complaint that does not name Chase as a
 17 defendant. To the extent the Court disagrees, and considers the earlier Complaint to be operative
 18 as against Chase, the Motion for Judgment should still be granted for the reasons set forth
 19 therein. The Motion for Judgment systematically dispelled each of Plaintiff's claims for relief,
 20 and the Response fails to meaningfully rebut any of the arguments in the Motion for Judgment.
 21 Accordingly, and pursuant to LR 7-2(d), the Motion for Judgment should be granted and
 22 Plaintiff's Complaint should be dismissed with prejudice as against Chase.
 23

24 **A. Plaintiff's Complaint Should Be Dismissed Pursuant To LR 7-2 Because
 25 Plaintiff Has Failed To Present Points And Authorities To Refute the
 26 Arguments Raised In The Motion for Judgment**

27 Pursuant to LR 7-2(d), failure to provide points and authorities in response to a motion
 28 "shall constitute a consent to the granting of the motion." LR 7-2(d). Plaintiff's Response fails

1 to present any points and authorities that respond to any of the arguments in the Motion for
2 Judgment, which dispel each of Plaintiff's claims for relief.
3

4 The Complaint asserts claims for declaratory relief, quiet title, accounting, and refund of
5 fees and costs. Each of these purported claims appears to be based upon Plaintiff's contention
6 that the defendants herein do not have authority to foreclose on the subject property. The Motion
7 for Judgment dispels each of these claims, and their underlying basis, and Plaintiff has failed to
8 present any argument sufficient to revive the claims.
9

10 The Motion for Judgment sets forth at least three reasons why the declaratory relief claim
11 is unsustainable: (1) declaratory relief is an equitable remedy, not an independent claim for
12 relief; (2) it is based on the unfounded accord and satisfaction argument (also refuted in the
13 Motion for Judgment); (3) Plaintiff is precluded from seeking equitable relief because, by
14 defaulting on the subject loan, he has failed to "do equity"; and (3) the declaratory relief claim is
15 duplicative of Plaintiff's other claims for relief and adds nothing to what would be implicit or
16 express in a final judgment on Plaintiff's other claims. (See Motion for Judgment, pp. 8-9.)
17 Plaintiff's Response fails to respond to any of these arguments. Accordingly, the declaratory
18 relief claim must be dismissed. *See* LR 7-2(d).
19

20 With respect to Plaintiff's quiet title claim, the Motion for Judgment sets forth at least
21 four reasons why it must be dismissed: (1) it is based on Plaintiff's unfounded accord and
22 satisfaction argument; (2) Plaintiff cannot establish that his interest in the subject property is
23 anything more than a conditional and encumbered interest – *i.e.*, subject to repayment of the
24 subject loan; (3) Plaintiff has not alleged, and cannot demonstrate, that he has paid off the subject
25 loan in full; and (4) as with the declaratory relief claim, he is precluded from seeking equitable
26 relief because he has failed to "do equity." (See Motion for Judgment, pp. 9-10.) Again, as with
27
28

1 the declaratory relief claim, Plaintiff's Response fails to respond to any of the arguments
 2 dispelling the quiet title claim. Accordingly, Plaintiff's quiet title claim must be dismissed. *See*
 3 LR 7-2(d).

4
 5 The Motion for Judgment also presents two reasons why Plaintiff's accounting claim
 6 fails: (1) Plaintiff has not presented any sustainable claim upon which a claim for accounting
 7 could be based; and (2) there is no fiduciary or trust relationship between the parties. Here
 8 again, Plaintiff's Response fails to respond to these arguments, and the accounting claim must be
 9 dismissed. *See* LR 7-2(d).

10
 11 Finally, as set forth in the Motion for Judgment, Plaintiff's claim for "refund, fees and
 12 costs" is unsustainable for two main reasons. First, it should be dismissed because "refund, fees
 13 and costs" is not a cognizable cause of action in Nevada. Second, it should be dismissed because
 14 it is based on Plaintiff's accord and satisfaction arguments regarding defendants' authority to
 15 enforce the subject loan, which are dispelled *supra*. In short, Plaintiff's "claim" for refund, fees
 16 and costs is not a viable cause of action, and must be dismissed.

17
 18 In sum, Plaintiff's Response fails to respond to any of the arguments in the Motion for
 19 Judgment, which arguments uniformly dispel each of his claims and contentions. Accordingly,
 20 pursuant to LR 7-2(d), the Motion for Judgment should be granted in its entirety.

21 **B. The Motion For Judgment Is Not Moot**

22 As noted above, the Complaint should be dismissed as against Chase because Plaintiff
 23 has consented to dismissal of Chase, and because Plaintiff's Response fails to meaningfully
 24 respond to any of the arguments in the Motion for Judgment. It is significant to note, however,
 25 that the sole argument contained in Plaintiff's Response – that the Motion for Judgment is moot
 26 – does nothing to revive Plaintiff's unsustainable claims for relief.

1 Specifically, Plaintiff asserts that the Motion for Judgment is moot¹ based on this Court's
 2 November 1, 2011 Order (Docket No. 39). It appears Plaintiff has misconstrued that Order,
 3 which dismissed Plaintiff's Complaint as against defendants Seterus, Inc., f/k/a IBM Lender
 4 Business Process Services, and Mortgage Electronic Registration Systems, Inc. only. Because
 5 the Order did not dismiss the Complaint as against Chase, Chase's Motion for Judgment is not
 6 moot, and it should be granted.

8 **III. CONCLUSION**

9 It is clear that Plaintiff has consented to dismissal of Chase. Moreover, as set forth
 10 herein, and in the Motion for Judgment, none of Plaintiff's claims has any merit as against
 11 Chase. Accordingly, Plaintiff's Complaint should be dismissed with prejudice as against Chase.

12 DATED this 23rd day of November, 2011.

13 SMITH LARSEN & WIXOM

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 15 _____
 16 Jay Earl Smith, Esq.
 17 Nevada Bar No. 1182
 18 Katie M. Weber, Esq.
 19 Nevada Bar No. 11736
 20 1935 Village Center Circle
 21 Las Vegas, Nevada 89134
 22 Attorneys for Defendant
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26 _____
 27 ¹ Plaintiff also believes that Chase's Emergency Motion for Stay of Litigation (Docket No. 41) is
 28 moot; however, that motion was recently granted by Magistrate Judge Leen. (See Order, Docket No. 42.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of November, 2011, a true copy of the foregoing **JPMorgan Chase Bank, N.A.'s Reply in Support of Its Motion for Judgment on the Pleadings** was filed electronically via the court's CM/ECF system and served either by mail, postage prepaid, or electronically as noted, to the following:

Ellery J. Pettit
6868 Skypointe Drive, #2136
Las Vegas, NV 89131
Plaintiff in Pro Per
(Served Via U.S. Mail)

Michael R. Brooks, Esq.
Jeffrey J. Todd, Esq.
Brooks Bauer LLP
300 S. Fourth St., Ste. 815
Las Vegas, NV 89101
Attorneys for Defendants
Seterus, Inc., f/k/a IBM Lender Business Process Services
and Mortgage Electronic Registration Systems, Inc.
(Served Via CM/ECF)

an employee of Smith Larsen & Wixom

ATTORNEY
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 257-5002 • FAX (702) 252-5006